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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 Charles Everett Cook, Sylvia Mae Cook,
4 and Timothy Blake Cook, natural persons,
Plaintiffs,

5 vs Court File 06-0022

6 City of Minneapolis, a municipal entity;
Minneapolis Police Officer Mark Johnson, Badge
7 #003459, in his individual, personal and official
capacity, Sgt. D. Smulski, in his individual,
8 personal and official capacity; Officer K. Blackwell,
in his individual, personal and official capacity;
9 Officer Geoffrey Toscano, Badge #007257, in his
individual, personal and official capacity; Officer
10 Bevsn Blauert, Badge #003459 in his individual,
personal and official capacity; Officer Jon Petron,
11 Badge #4671, in his individual, personal and official
capacity; Officer Christopher House, Badge #3165, in

his

Robert

#4959, in

Officer

personal

in

Officer

personal and

in

Officer

personal

Richard

their

12 individual, personal and official capacity; Sgt.
Kroll, Badge #003874, in his individual, personal and
13 official capacity; Officer Christie Nelson, Badge
her individual, personal and official capacity;
14 William Willner, Badge #7783, in his individual,
and official capacity; Officer Westlund, Badge #7674,
15 his individual, personal and official capacity;
Roger Smith, Badge #006689, in his individual,
16 official capacity; Officer Jason King, Badge #003704,
his individual, personal and official capacity;
17 Timothy Hands, Badge #002660, in his individual,
and official capacity; and Officer Jane Doe and
18 Roe, unknown, unnamed officers of the Minneapolis, in
personal, individual

19 and official capacity;

20 Defendants.

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Whereupon, the following deposition was taken of

DONALD

22 SMULSKI, pursuant to Notice, according to the Rules of
Civil Procedure for the State of Minnesota, taken on

the

23 13th day of February, 2007 before Lorie M. Jensen,

Notary

Public, Washington County, Minnesota.

24

25

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1 APPEARANCES:

2

3 Albert T. Goins, Attorney at Law, Goins Petry

Law, 301

4 Fourth Avenue South, 378 Grain Exchange Building,

5 Minneapolis, Minnesota 55415, appearing as Counsel for

and

6 on behalf of the Plaintiffs;

7

8 Tracy Nelson, Assistant City Attorney, City

Attorney's

9 Office, 333 South 7th Street, Suite 300, Minneapolis,

10 Minnesota 55402, appearing as Counsel for and on

behalf of

11 the Defendants.

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6 Mr. Goins 4

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15 OBJECTIONS:

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and

1 Whereupon, the following proceedings were duly held

2 made a part of the record, as follows, to-wit:

3 DONALD SMULSKI,

4 having been first duly sworn, was examined,

5 and testified, under oath, as follows:

6 EXAMINATION:

7 BY MR. GOINS:

8 Q. State your full name, please?

9 A. Sergeant Donald L. Smulski. S-m-u-l-s-k-i.

10 Q. Sergeant Smulski, you've had your deposition
taken

11 before, correct?

12 A. Yes.

13 Q. And tell me, first of all, what your employment
is for

14 the record?

15 A. I am currently a uniformed patrol supervisor,
16 considered a Sergeant.

17 Q. That's with the MPD, Minneapolis Police
Department?

18 A. Yes.

19 Q. How long have you been with the Minneapolis
Police

20 Department?

21 A. It will be 20 years next Friday.

22 Q. Congratulations.

23 A. Thank you.

24 Q. What was your prior assignment, let me get more
detail

25 about your current assignment. You said you're a

5

that? 1 supervisor uniformed patrol, what precinct is

2 A. 3rd Precinct, Lake and Minnehaha.

word 3 Q. Would you have jurisdiction for lack of a better

4 over 3845 2nd Avenue South?

5 A. Yes.

13, 6 Q. Were you there for a search on or about January

7 2005?

8 A. Yes.

9 Q. What was the nature of that search?

10 A. For evidence connected to a robbery.

11 Q. Okay. Do you recall the nature of that search

was 12 warrant, what I'm asking is do you remember if it

13 a knock and announce or a no-knock?

14 A. I believe it was a no-knock.

15 Q. Do you remember if it was a night time warrant?

16 A. Yes.

17 Q. Do you remember when you went in on that warrant?

18 A. It was around our military time 2230 hours.

19 Q. That would have been about 10:30 at night?

20 A. 10:30.

21 Q. Who was in charge of that search?

search of 22 A. Are you referring to the entry or the actual

23 the residence I guess?

24 Q. Let's start with the search of the residence?

was 25 A. Technically I was the Sergeant of the team that

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6

1 there for the search.

2 Q. Okay. Who was in charge of the entry?

3 A. Sergeant Kroll.

4 Q. Is that Sergeant Robert Kroll?

5 A. Yes.

6 Q. Who involved him in this search?

7 A. I would have.

8 Q. Why did you do that?

9 A. Based on our policy the criteria is if it's
considered

10 a high risk with weapons, or the nature of what
the

11 suspects are involved with, by policy we need to
use

12 our entry team to get us into the place so we can
13 execute the search warrant.

14 Q. Okay. So in other words, what is the policy, why
15 don't you tell me a little bit about that?

16 A. Like I just explained, if you know the person
possibly

17 could have been armed in the place, or the
likelihood

18 that some type of serious injury could happen to
you

19 or whatever, then we need to use an entry team.

20 Q. Okay. Have you ever worked with Sergeant Kroll
21 before?

22 A. Yes.

23 Q. On entry situations?

24 A. I believe so.

25 Q. Okay. When you've worked with him in the past,
has he

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1 had occasion to use force?

2 A. I guess.

3 MS. NELSON: I'll object as vague.

4 MR. GOINS: Okay.

5 Mr. Goins (Continuing)

6 Q. You can go ahead and answer that.

7 A. I guess I per se never went in on an entry with
him so

8 I don't know what he does inside a place.

9 Q. So you never been actually in an entry with
Sergeant

10 Kroll before this date of January --

11 A. As a perimeter we probably have used him in the
past

12 to make an entry into a place for us but I'm not
part

13 of the entry team so that would probably clarify
it.

14 Q. You haven't actually been in in going in with him
as

15 part of the entry team to see what kind of force
he

16 used in the past?

17 A. I'm not part of the ERU so I wouldn't be
qualified to

18 go in with him on an entry.

19 Q. Maybe I can clarify it like this. When you have
ERU,

20 is it the case that the officers who are
executing the

21 warrant wait for ERU to go in, secure the
location and

22 once it's secured then other officers enter, is
that

23 correct?

24 A. Yes.

25 Q. On this particular date on 1-13-05 after you and

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1 Officer Blackwell had prepared the search warrant
and

2 presented it to Judge Beloiz, it was actually
Sergeant

3 Kroll who made the initial entry into the
residence at

4 that 3845 2nd Avenue South address, correct?

5 A. Yes.

6 Q. Do you know how long it took Sergeant Kroll and
his

7 1280 team to secure the residence?

8 A. I don't recall.

9 Q. But would it be fair to say that they went in
before

10 you went in?

11 A. Yes.

12 Q. Would it be fair to say that his team is
approximately

13 four to five officers?

14 A. Yes.

15 Q. Who conducted, if any was conducted, the briefing
with

16 respect to this search warrant?

17 A. Well, it's a two part briefing. One is we
explained

18 to whichever entry sergeant is going to be making
the

19 entry what the elements of why we're going in
there,

20 they're shown a couple of search warrant. We
make out

21 what is called an ERU high risk entry form which
is it

22 explains certain criteria of checking the box.
If

23 those boxes criteria meet the criteria for the
area we

24 are suppose to use them, we give them that form.

25 Afterwards any operational deployment is with the
ERU

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1 people as far as approach, entry and the
establishing

2 the interior of a residence.

3 Q. Okay. Now when you did enter and in fact let's
4 establish, did you actually enter 3845 2nd Avenue
5 South at some point in that evening?

6 A. Yes.

7 Q. When you entered, what did you see?

8 A. Initial was an elderly gentleman laying
unhandcuffed
9 on the floor.

10 Q. Do you know who, let me interrupt you, do you
know who
11 put him on the floor?

12 A. No.

13 Q. Go ahead.

14 A. There's another middle aged individual that was
15 handcuffed yelling quite boisterous on the floor
not

16 too far from him.

17 Q. Can you describe that individual?

18 A. Heavy set black male, I think it was Tim was his
first
19 name was.

20 Q. Would that have been Timothy Cook?

21 A. Yes.

22 Q. You said he was or was not handcuffed?

23 A. He was.

24 Q. Front or back?

25 A. I don't recall.

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the

1 Q. Do you know who handcuffed him and placed him on
2 floor?

3 A. No.

4 Q. Did you see any force applied to him?

5 A. No.

6 Q. What else did you see?

females

7 A. There was an elderly female and two to three

off

8 with children on a couch in the living room just

9 the doorway, front door.

10 Q. That elderly female, did you ever get her name?

11 A. Sylvia sticks out but I would have to look at my
12 report.

13 Q. Okay. Do you think that was maybe Sylvia Cook?

14 A. Yes.

missed

15 Q. All right. Did you see if she was cuffed, I

16 that, was she cuffed or not cuffed?

17 A. I don't believe she was.

18 Q. Do you know if any force was used against her?

19 A. No.

20 Q. Let me clarify that. I've learned this from your

21 colleague Lynne Fundsingland when I ask double

22 negatives. Did you see any force used against
her,

23 Sergeant?

24 A. No.

25 Q. Do you know if any force was used against her?

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11

1 A. I don't know.

2 Q. Okay. Thank you. In addition to Sergeant Kroll,
let

3 me see if I can get the names correct for the
high

4 risk entry team. Officer Hanks?

5 A. Yes.

6 Q. Officer Stender?

7 A. No.

8 Q. He was not part of that?

9 A. No, I don't believe he was.

10 Q. How about Officer King?

11 A. Yes.

12 Q. How about Officer Blauert?

13 A. Yes.

14 Q. How about Officer Toscano?

15 A. Yes.

16 Q. How about Officer Smith?

17 A. Do you know which one?

18 Q. Good question. Officer R. Smith, that would be
Roger?

19 A. Yes.

20 Q. That's Big Roger?

21 A. Yes.

22 Q. Okay. Let me just show you this, have it marked
23 Exhibit 1.

24 (Whereupon, Smulski Deposition
Exhibit

25 Number 1 was marked for identification by the
Court

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1 Reporter.)

2 Mr. Goins (Continuing)

3 Q. Showing you what's been marked as Smulski Exhibit
1,

4 would you take a look at that, please?

5 A. Yes.

6 Q. What is that?

7 A. That is a supplement Officer Blackwell and I
prepared
8 after the search that day.
9 Q. Okay. Now who actually wrote that report, you or
10 Officer Blackwell?
11 A. We did it jointly.
12 Q. Where is Officer Blackwell right now, do you
know?
13 A. On deployment in Iraq.
14 Q. Okay. Do you know how long she's been gone?
15 A. I want to say --
16 Q. If you don't know, that's fine.
17 A. I want to say close to 18 months it would be in
April.
18 Q. That's Officer Katie Blackwell?
19 A. Yes.
20 Q. Showing you what's been marked as Nelson Exhibit
2, do
21 you recognize that document?
22 A. Yes.
23 Q. What is that?
24 A. Normally in old school referred to as page 4 of
the
25 search warrant but it's 21 here. It's the copy
giving

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house. 1 us actual permission by the courts to go into a

familiar 2 Q. Do you notice if that gives you -- you're

3 with search warrants, correct?

4 A. Yes.

what 5 Q. Do you know if that gives you no-knock authority,

announcement? 6 is called authority to enter without

7 A. It would be on Page 13.

8 Q. Are you sure it's not on there?

9 A. Court further finds enter without announcement of

10 authority and purpose.

11 Q. That's a no-knock warrant?

12 A. Yes.

13 Q. Is it a night time warrant?

14 A. Yes.

said 15 Q. Do you know what the application for the warrant

16 that Officer Blackwell prepared?

17 A. Referring to the Page 13?

18 Q. Right.

19 A. I don't offhand.

20 Q. You didn't prepare the 13 page?

the 21 A. I was there with her but I don't recall without

22 copy what it first states per se.

opposed to 23 Q. Sure. You're aware to get the no-knock as

certain 24 the night time authority you got to provide

25 showings to the court, you know that, right?

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14

1 A. Yes.

2 Q. Those showings would have been made by Officer

Katie

3 Blackwell, is that correct?

4 A. Yes.

5 Q. To the extent you know that was done, that's who

would

6 have done it, right?

7 A. Yes.

8 Q. Did you see anyone abused while they were in the

9 house?

10 A. No.

11 Q. Did you hear any foul language used towards

anyone?

12 A. No.

13 Q. Again, can you give me an estimate about how long

it

14 would have been you would have entered after

Sergeant

15 Kroll and his team entered?

16 A. No, I don't recall.

17 Q. Do you think it was maybe a matter of minutes?

18 A. I would say less than five would probably be a

safe

19 surmise.

20 Q. That's fine.

21 MR. GOINS: All right.

22 MS. NELSON: We'll read and sign.

23

24 * * * * *

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2 VERIFICATION

3 I, Donald Smulski, the undersigned, do hereby
certify

4 that the foregoing deposition of my testimony is a
true and

5 correct reproduction of same, except for the following

6 changes if any, stating the page and line number of
said

7 change; also stating the reason.

8 Page Line Change Reason

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____
22 Donald Smulski Date
23 _____
24 WITNESS MY HAND AND SEAL this _____ day of
_____,
25 2007

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1
2 STATE OF MINNESOTA)
3)
4 COUNTY OF WASHINGTON)
5 I, Lorie M. Jensen, Notary Public, Washington

County,

SMULSKI, 6 Minnesota, took the foregoing deposition of DONALD

7 that the witness was by me first duly sworn;

8 That the testimony was transcribed under my
direction

9 and is a true record of the testimony of the witness;

10 That the cost of the original has been charged to
the

11 party who noticed the deposition, and that all parties
who

12 ordered copies have been charged at the same rate for
such

13 copies;

14 That I am not a relative or employee or attorney
or

15 counsel of any of the parties, or a relative or
employee of

16 such attorney or counsel;

17 That I am not financially interested in the
action and

18 have no contract with the parties, attorneys, or
person

19 with an interest in the action that affects or has a

20 substantial tendency to affect my impartiality.

21 Dated this 17th day of February, 2007.

22

Public

23 Lorie M. Jensen, Notary

24 Washington County, Minnesota

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